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SENATE BILL 27

Environment and Natural Resources Committee Substitute Adopted 2/20/89

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Short Title: NC May Exceed US Environmental Regs.

(Public)

Sponsors:

Referred to:

January 18, 1989

A BILL TO BE ENTITLED

AN ACT TO REPEAL THOSE PORTIONS OF THE GENERAL STATUTES WHICH REQUIRE THAT ENVIRONMENTAL RULES BE NO MORE RESTRICTIVE THAN COMPARABLE FEDERAL REGULATIONS, TO REQUIRE THAT AN ASSESSMENT REPORT BE PREPARED AS TO THE BENEFITS AND BURDENS LIKELY TO RESULT FROM ENVIRONMENTAL RULE-MAKING, AND TO REQUIRE THAT THE BENEFITS OF ENVIRONMENTAL RULE-MAKING EXCEED THE BURDENS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-128.2(a) reads as rewritten:

"(a) The rules and regulations promulgated pursuant to G.S. 143-215.107(a)(6) for the purposes of this section shall be limited to carbon monoxide, shall be statewide in scope but enforced on a county unit basis when ambient air pollutant concentrations exceed the National Ambient Air Quality Standards established pursuant to the Clean Air Act of 1970 as amended by the Clean Air Act amendments of 1977 and when the Environmental Management Commission certifies to the Commissioner of Motor Vehicles that the ambient air quality within a specified county requires a motor vehicle inspection/maintenance program; provided the Environmental Management Commission may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this section. ~~Such standards shall be no more restrictive or stringent than federal standards, as required by G.S. 143-215.107(f).~~"

1           Sec. 2. G.S. 130-166.21D is repealed.

2           Sec. 2.1. Chapter 130A of the General Statutes is amended by adding a new  
3 section to read:

4 **"§ 130A-294.2. Waste pesticides, containers, and residues generated by farmers.**

5           A farmer disposing of waste pesticides from his own use which are hazardous  
6 wastes may not be required to comply with standards which exceed federal law and  
7 regulations and rules adopted by the North Carolina Pesticide Board for those wastes  
8 provided that each empty pesticide container is triple rinsed in accordance with such  
9 law, regulations, and rules and pesticide residues are disposed of on the farmer's own  
10 farm in a manner consistent with the disposal instructions on the pesticide label."

11           Sec. 3. G.S. 143-215 reads as rewritten:

12 **"§ 143-215. Effluent standards and limitations.**

13           (a) The Commission is authorized and directed to develop, adopt, modify and  
14 revoke effluent standards and limitations and waste treatment management practices as  
15 it determines necessary to prohibit, abate, or control water pollution. The effluent  
16 standards or limitations or management practices may provide, without limitation,  
17 standards or limitations or management practices for any point source or sources;  
18 standards, limitations, management practices, or prohibitions for toxic wastes or  
19 combinations of toxic wastes discharged from any point source or sources; and  
20 pretreatment standards for wastes discharged to any disposal system subject to effluent  
21 standards or limitations or management practices.

22           (b) The effluent standards and limitations developed and adopted by the  
23 Commission shall provide limitations upon the effluents discharged from pretreatment  
24 facilities and from outlets and point sources to the waters of the State adequate to limit  
25 the waste loads upon the waters of the State to the extent necessary to maintain or  
26 enhance the chemical, physical, biological and radiological integrity of the waters. The  
27 management practices developed and adopted by the Commission shall prescribe  
28 practices necessary to be employed in order to prevent or reduce contribution of  
29 pollutants to the State's waters.

30           (c) ~~In adopting effluent standards and limitations and management practices the~~  
31 ~~Commission shall be guided by the same considerations and criteria set forth, from time~~  
32 ~~to time, in federal law for the guidance of federal agencies administering the Federal~~  
33 ~~Water Pollution Control Program. It is the intent of the General Assembly that the~~  
34 ~~effluent standards and limitations and management practices adopted hereunder shall be~~  
35 ~~no more restrictive than the most nearly applicable federal effluent standards and~~  
36 ~~limitations and management practices. Except as required by federal law or regulations,~~  
37 the Commission may not adopt effluent standards or limitations applicable to animal  
38 feeding operations not designated as concentrated animal feeding operations. The  
39 definitions and provisions of Title 40, Code of Federal Regulations § 122.23 shall apply  
40 to this subsection."

41           Sec. 4. G.S. 143-215.3(a)(15) reads as rewritten:

42           ~~"(15) To implement programs to prevent pollution from underground tanks~~  
43 ~~containing oil or hazardous substances, in accordance with those~~  
44 ~~requirements made mandatory upon approved State programs by~~

1                    ~~federal agencies administering the Resource Conservation and~~  
2                    ~~Recovery Act, as amended, including the Hazardous and Solid Waste~~  
3                    ~~Amendments of 1984. To adopt rules and implement programs to~~  
4                    ~~prevent pollution from underground tanks containing petroleum,~~  
5                    ~~petroleum products, or hazardous substances."~~

6                    Sec. 5. G.S. 143-215.107 reads as rewritten:

7                    **"§ 143-215.107. Air quality standards and classifications.**

8                    (a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed  
9                    and empowered, as rapidly as possible within the limits of funds and facilities available  
10                    to it, and subject to the procedural requirements of this Article and Article 21:

- 11                    (1) To prepare and develop, after proper study, a comprehensive plan or  
12                    plans for the prevention, abatement and control of air pollution in the  
13                    State or in any designated area of the State.
- 14                    (2) To determine by means of field sampling and other studies, including  
15                    the examination of available data collected by any local, State or  
16                    federal agency or any person, the degree of air contamination and air  
17                    pollution in the State and the several areas of the State.
- 18                    (3) To develop and adopt, after proper study, air quality standards  
19                    applicable to the State as a whole or to any designated area of the State  
20                    as the Commission deems proper in order to promote the policies and  
21                    purposes of this Article and Article 21 most effectively.
- 22                    (4) To develop and adopt classifications for use in classifying air  
23                    contaminant sources, which in the judgment of the Commission may  
24                    cause or contribute to air pollution, according to levels and types of  
25                    emissions and other characteristics which relate to air pollution and  
26                    may require reporting for any such class or classes. Such  
27                    classifications may be for application to the State as a whole or to any  
28                    designated area of the State, and shall be made with special reference  
29                    to effects on health, economic and social factors, and physical effects  
30                    on property. Any person operating or responsible for the operation of  
31                    air contaminant sources of any class for which the Commission  
32                    requires reporting shall make reports containing such information as  
33                    may be required by the Commission concerning location, size, and  
34                    height of contaminant outlets, processes employed, fuels used, and the  
35                    nature and time periods or duration of emissions, and such other  
36                    information as is relevant to air pollution and available or reasonably  
37                    capable of being assembled.
- 38                    (5) To develop and adopt such emission control standards as in the  
39                    judgment of the Commission may be necessary to prohibit, abate or  
40                    control air pollution commensurate with established air quality  
41                    standards. Such standards may be applied uniformly to the State as a  
42                    whole or to any area of the State designated by the Commission.

1 (6) To adopt, when necessary and practicable, a program for testing  
2 emissions from motor vehicles and to adopt motor vehicle emission  
3 standards in compliance with applicable federal regulations.

4 (7) To develop and adopt standards and plans necessary to implement  
5 programs for the prevention of significant deterioration and for the  
6 attainment of air quality standards in nonattainment areas; ~~provided, that~~  
7 ~~the Commission shall adopt no standard which is not made mandatory upon~~  
8 ~~approved State programs by rules, regulations or published guidelines of the~~  
9 ~~United States Environmental Protection Agency or the Federal Clean Air~~  
10 ~~Act.~~ areas.

11 (b) Criteria for Standards. – In developing air quality and emission control  
12 standards, the Commission shall recognize varying local conditions and requirements  
13 and may prescribe different standards for different areas as may be necessary and  
14 appropriate to facilitate accomplishment of the stated purposes of this Article and  
15 Article 21.

16 (c) Chapter 150B of the General Statutes governs the adoption and publication of  
17 rules under this Article.

18 ~~(f) Guidance of Federal Criteria and Legislative Intent.—In adopting air quality~~  
19 ~~policies, rules, and procedures, the Commission or any other State or local regulatory~~  
20 ~~body shall be guided by the same standards, definitions, considerations and criteria set~~  
21 ~~forth, from time to time, in federal law, rules or regulations for the guidance of federal,~~  
22 ~~State or local agencies administering the Federal Clean Air Program.~~

23 ~~It is the intent of the General Assembly (i) that the air quality rules, procedures,~~  
24 ~~plans, practices, air quality standards, and emission control standards adopted by the~~  
25 ~~Commission pursuant to this Article or Article 21, or by any other State or local~~  
26 ~~regulatory body under the General Statutes of North Carolina, shall be no more~~  
27 ~~restrictive and no more stringent than required to comply with federal ambient air~~  
28 ~~quality standards or other applicable federal requirements, if any, adopted in final or~~  
29 ~~proposed regulations by the United States Environmental Protection Agency under or~~  
30 ~~pursuant to the Federal Clean Air Act, and amendments thereto; except (ii) that no air~~  
31 ~~quality rules, procedures, plans, practices, air quality standards or emission control~~  
32 ~~standards shall be adopted by the Commission with respect to matters on which the~~  
33 ~~United States Environmental Protection Agency has not proposed or adopted final~~  
34 ~~regulations unless the Commission first considers, among other things, an assessment of~~  
35 ~~the economic impact of the proposed standards. The Department shall prepare and~~  
36 ~~submit into the record of the rule making hearing an economic impact study of such~~  
37 ~~proposed standards. Such study shall include an estimate of the economic and social~~  
38 ~~costs to commerce and industry, units of local government, and agriculture necessary to~~  
39 ~~comply with the proposed standards and an examination of the economic and social~~  
40 ~~benefits of such compliance."~~

41 Sec. 6. G.S. 143B-30.2(a) reads as rewritten:

42 "(a) Rules adopted by an agency on or after September 1, 1986, shall be submitted  
43 to the Administrative Rules Review Commission, which shall review the rule to  
44 determine whether it:

- 1 (1) Is within the authority delegated to the agency by the General  
2 Assembly;
- 3 (2) Is clear and unambiguous;
- 4 (3) Is reasonably necessary to enable the administrative agency to perform  
5 a function assigned to it by statute or to enable or facilitate the  
6 implementation of a program or policy in aid of which the rule was  
7 adopted, provided that, for rule-making for which an assessment report  
8 is required by G.S. 150B-11.1, no rule shall be determined to be  
9 reasonably necessary unless the agency has found that the benefits of  
10 the rule exceed its burdens.

11 Any rule filed by the 20th of a month shall be reviewed by the Commission by the  
12 last day of the next calendar month. Any rule filed after the 20th of a month shall be  
13 reviewed by the Commission by the last day of the second subsequent calendar month.  
14 The Commission may extend the time for review of a rule by a period of up to 70 days  
15 to obtain additional information on the rule. The Commission shall file notice of the  
16 extension of time for review of a rule with the agency and the Director of the Office of  
17 Administrative Hearings. A rule may not be presented for filing with the Director of the  
18 Office of Administrative Hearings under G.S. 150B-59 unless the rule has been  
19 reviewed by the Commission as provided in this section."

20 Sec. 7. Chapter 150B of the General Statutes is amended by adding a new  
21 section to read:

22 "**§ 150B-11.1. Additional requirements applicable to certain rule-making.**

23 (a) In addition to other rule-making requirements imposed by law, and except as  
24 provided in subsection (b) of this section, the requirements of this section shall apply to  
25 rule-making pursuant to:

- 26 (1) G.S. 20-128.2;
- 27 (2) Article 9 of Chapter 130A of the General Statutes;
- 28 (3) G.S. 130A-320; and
- 29 (4) Articles 21, 21A, 21B, and 38 of Chapter 143 of the General Statutes.

30 (b) This section shall not apply to any federal regulation adopted by reference  
31 pursuant to G.S. 150B-14, to any State standard that is identical to a federal standard, to  
32 any State standard the form of which prescribed by federal law or regulation, to rule-  
33 making for which no hearing is required as provided by G.S. 150B-12(f) through (h), or  
34 to temporary rule-making pursuant to G.S. 150B-13.

35 (c) An agency which proposes to adopt, amend, or repeal rules pursuant to any  
36 provision of law to which this section applies shall prepare and consider an assessment  
37 report as a part of the rule-making process. The assessment report shall consist of an  
38 estimate of the aggregate social and economic benefits and burdens likely to result from  
39 the proposed rule-making and shall include, at a minimum, an examination of benefits  
40 and burdens to: (i) the environment and the ecology; (ii) public health; (iii) commerce  
41 and industry; (iv) State and local governments; and (v) agriculture. The assessment  
42 report shall also include, to the extent practical, an estimate of the extent to which  
43 proposed rule-making will result in an increase or decrease in paperwork. No rule shall

1 be adopted, amended, or repealed pursuant to any provision of law to which this section  
2 applies unless the agency finds that the benefits of such rule-making exceed its burdens.

3 (d) The assessment report shall present all relevant data, assumptions, analysis,  
4 and calculations in sufficient detail to permit the agency and any reviewing body to  
5 easily understand the information presented. The scope of the assessment report and the  
6 resources allocated to its preparation shall be commensurate with the availability of  
7 information and the relative significance of the proposed rule-making. The agency  
8 responsible for the preparation of an assessment report shall make reasonable efforts to  
9 secure information needed for the report, including the exercise of any statutory  
10 authority for the collection of information.

11 (e) The assessment required by this section shall take into account the  
12 uncertainties associated with the estimation of particular benefits and burdens and the  
13 difficulties involved in the comparison of qualitatively and quantitatively dissimilar  
14 benefits and burdens. The assessment of benefits and burdens which cannot be  
15 precisely quantified may be expressed in qualitative terms. The assessment required by  
16 this section shall include consideration of both short-term and long-term benefits and  
17 burdens.

18 (f) This section shall not be interpreted to require a numerically precise cost-  
19 benefit analysis nor to require an assessment or consideration of costs where such  
20 assessment and consideration is prohibited by federal law or regulation.

21 (g) In preparing the assessment report, the agency may request technical  
22 assistance from any department of State government, the Agricultural Extension  
23 Service, and the institutions of The University of North Carolina regarding the  
24 acquisition and analysis of data necessary to assess the benefits and burdens of proposed  
25 rule-making.

26 (h) A notice of proposed rule-making shall include information as to the  
27 availability of an assessment report unless the agency proposes not to prepare an  
28 assessment report as provided by subsection (i) of this section. The assessment report  
29 shall be completed and copies shall be available for distribution to the public at least 15  
30 days prior to the rule-making hearing. The agency may charge a reasonable fee to cover  
31 the cost of printing and postage.

32 (i) An agency may propose not to prepare an assessment report if it reasonably  
33 determines that proposed rule-making is not likely to result in any significant burden to  
34 any person. An agency shall include notice of its intent not to prepare an assessment  
35 report unless requested and the procedure for requesting that an assessment report be  
36 prepared in the notice of proposed rule-making. A rule-making hearing shall not be  
37 held earlier than 60 days after the date such notice is published. Any person may,  
38 within 30 days of the publication of such notice, request in writing that an assessment  
39 report be prepared. A request that an assessment report be prepared must include  
40 sufficient data to demonstrate that the proposed rule-making would result in a  
41 significant burden to the person making the request. Upon receipt of a timely written  
42 request the agency shall prepare an assessment report as required by this section, and  
43 the rule-making hearing shall not be held until the assessment report has been  
44 completed as required by subsection (h) of this section.

1       (j) If a proposed rule is modified during the course of the rule-making  
2 proceeding, and such modification would significantly affect the assessment of benefits  
3 and burdens, the assessment report shall be amended accordingly. The agency shall  
4 include the final assessment report in the record of the rule-making proceeding.

5       (k) This section shall not be construed to affect the validity of any rule in force  
6 on the effective date of this section."

7           Sec. 8. This act shall not be construed to obligate the General Assembly to  
8 make any appropriation to implement the provisions of this act. Each department and  
9 agency to which this act applies shall implement the provisions of this act from funds  
10 otherwise appropriated to that department or agency.

11           Sec. 9. This act is effective upon ratification. G.S. 150B-11.1 as enacted by  
12 this act shall not apply to any rule-making proceeding in which notice of public hearing  
13 has been published as of the effective date of this act.